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Before  
**FEDERAL COMMUNICATIONS COMMISSION**  
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FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
 )  
Amendment of Part 90 of the ) PR Docket No. 93-144  
Commission's Rules to Facilitate ) RM-8117, RM-8030  
Future Development of SMR Systems ) RM-8029  
in the 800 MHz Frequency Band )

and

Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act - )  
Competitive Bidding )  
800 MHz SMR )

To: The Commission

**COMMENTS OF THE COUNCIL OF INDEPENDENT COMMUNICATION SUPPLIERS**

The Council of Independent Communication Suppliers ("CICS"), pursuant to the Federal Communications Commission's Further Notice of Proposed Rule Making in the above-referenced matter, hereby respectfully submits these Comments responsive to the Commission's proposal.<sup>1</sup>

**I. PRELIMINARY STATEMENT**

1. CICS is an unincorporated association of entities engaged in serving the needs of private radio eligibles, particularly those located in small and rural communities throughout the United

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<sup>1</sup> Further Notice of Proposed Rule Making (FCC 94-271), adopted October 20, 1994, released November 4, 1994, (hereinafter "Further Notice").

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States. CICS' membership is open to SMR operators, radio dealers, equipment suppliers, communications engineers and consultants. CICS was formed to provide these entities a voice in the policy-making process governing use of the electromagnetic spectrum, especially spectrum allocated to the Private Land Mobile Radio Services. CICS is an independent market council of ITA.

## II. BACKGROUND

2. There are 14 megahertz of spectrum in the 800 MHz band that are designated for SMR use. This spectrum is in two distinct blocks:

- A "lower block" consisting of four megahertz (80 channel pairs), with the mobile "side" of the pairs located in the range 811.0125-815.6875 MHz and the base frequencies located in the range 856.0125-860.6875 MHz.
- An "upper block" consisting of ten megahertz (channels 401-600), with the mobile "side" of the pairs located in the range 816.0125-820.9875 MHz and the base frequencies located in the range 861.0125-865.9875 MHz.

From the perspective of CICS' members, there are three fundamental issues involved in this proceeding:

- whether the 200 channels in the "upper block" should be designated for wide-area SMR systems?
- whether the 80 channels in the "lower block" should be designated for non-wide area or local systems?
- assuming that the FCC does designate the "upper block" for wide-area systems and the "lower block" for local systems, should non-wide area systems currently using frequencies in the "upper block" be required to move to the "lower block" or to other alternative spectrum in order to accommodate licensees seeking to establish wide-area systems?

### III. COMMENTS

3. The emergence of wide-area SMR systems, coupled with the flood of speculative applications, has exhausted the SMR spectrum in virtually all urban areas throughout the country and in many predominantly rural areas. Consequently, most SMR systems, whether wide-area or local in nature, are no longer able to secure additional spectrum to expand their systems.

4. There are a variety of reasons for the existing state of affairs. All of the participants in the process, including the FCC, wide-area proponents and speculators, bear some responsibility for the existing situation. Regardless of the cause, however, the fact remains that there is little possibility for existing SMR systems to expand, without some adjustment in the existing frequency allocation and assignment pattern.

5. To prepare for the filing of comments in this proceeding, CICS surveyed its membership regarding the fundamental issues under consideration. A summary of the results of this survey of CICS' members is included as an enclosure to these Comments. Based on its membership survey, CICS concludes that there would be serious difficulties arising from any effort to mandate the re-tuning of smaller SMR systems to frequencies outside the "upper block". These difficulties include: (1) significant expense, both in terms of direct capital outlays and indirect costs to licensees,

(2) technical complexity, (3) disruption in service, and (4) loss of customer good will. If smaller SMR systems are to be re-tuned to frequencies outside the "upper block," it would have to be accomplished in a way that minimizes the adverse impact on the licensees of these systems.

6. Available estimates indicate that the direct cost of re-tuning systems to frequencies outside the "upper block" would be approximately \$5,000-\$6,000 per frequency or higher. Cost considerations aside, there may not be sufficient spectrum available outside the upper block to support the re-tuning effort. The difficulty of finding available spectrum is complicated by the need, in most cases, for a minimum of 250 kilohertz separation between the various channels used by a particular system.

7. Before the Commission considers any proposal to make re-tuning mandatory, CICS believes that the proponents of re-tuning must demonstrate conclusively that re-tuning would be technically feasible, economically efficient and not seriously disruptive of existing operations. CICS does not believe that, to date, the proponents of mandatory re-tuning have satisfied this burden of proof. CICS will carefully review any suggestions for resolving this very difficult dilemma that may be advanced by other commenters in this proceeding.

8. CICS does support the Commission's proposal to designate the "upper block" for wide-area SMR systems and the "lower block" for local SMR systems. The distinction between the "lower block" and the "upper block" of SMR channels represents a useful demarcation between wide-area and local SMR systems. CICS recognizes that the upper block frequencies, as a practical matter, will ultimately be devoted almost entirely to wide-area operations. At the same time, however, there is a need to preserve adequate frequencies for local systems. CICS believes that the FCC's proposal to license local systems on the lower block is useful, provided that the Commission allows all incumbent SMR the option of continuing to operate at previously authorized sites.

9. From CICS' perspective, there appear to be two basic options for accommodating the future growth and expansion of small-to-medium-sized SMR systems:

- small-to-medium-sized SMR systems could enter into management agreements with wide-area systems;
- small-to-medium-sized SMR systems could be re-tuned to frequencies outside the "upper block" so that they could perhaps use "lower block" frequencies for expansion.

CICS urges the Commission to allow existing small-to-medium-sized SMR systems to have the option, on a strictly voluntary basis, of re-tuning their systems to the lower block frequencies. Such an approach would allow the re-tuning effort to be dictated by the course of negotiations between wide-area SMR systems and the

operators of smaller systems.

10. CICS opposes the use of auctions to assign the sparse amount of spectrum that remains available in the 800 MHz band. CICS finds that spectrum auctions inevitably favor those entities with the deepest pockets and disadvantage existing licensees having a legitimate need for additional spectrum to accommodate system expansion.

11. CICS believes the Commission should take specific action to distinguish "speculative" applicants from legitimate entities having both a need for spectrum and a genuine intention to put the spectrum to good use. CICS believes that the Commission should require all of the entities having currently pending applications for SMR systems to post a performance bond as a condition of licensing. CICS would also apply the performance bond requirement to applicants seeking to establish SMR systems in the future.

12. CICS is sensitive to the fact that smaller entities may have some difficulty in obtaining performance bonds and may, in some cases, have to guarantee 100% collateral in order to obtain such a bond. Accordingly, CICS would establish the performance bond at a relatively low level, such as \$10,000 for each licensed station. A requirement of this amount would ease the burden placed upon smaller entities while establishing a minimum threshold level

of interest and commitment by all applicants. CICS believes that such a measure would discourage the attempts by pure speculators to obtain the rights to the SMR frequencies.

#### IV. CONCLUSION

13. For the reasons discussed above, CICS is not persuaded, at this point, that mandatory re-tuning of SMR systems from the upper block to the lower block is feasible. CICS does support the Commission's proposal to designate the upper block for wide-area SMRs and the lower block for local systems. CICS does not believe it is either practical or feasible to apply auctions in the context of the 800 MHz band and therefore urges the Commission to reject auctions as an assignment mechanism for this band. CICS also supports the use of performance bonds as a threshold test for establishing the sincerity and commitment of entities that have applications for SMR systems pending with the Commission or that may apply in the future.

**WHEREFORE, THE PREMISES CONSIDERED,** the Council of Independent Communication Suppliers respectfully submit these Comments and urges the Federal Communications Commission to act in accordance with the views expressed herein.

**COUNCIL OF INDEPENDENT  
COMMUNICATION SUPPLIERS**

By: Andrew Daskalakis/jgd  
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Enclosure

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ENCLOSURE

**RESULTS OF CICS' MEMBERSHIP SURVEY**

The Council of Independent Communication Suppliers (CICS) surveyed its members to determine their position on issues relating to the "re-tuning" option discussed at paragraphs 32-37 of the Further Notice of Proposed Rule Making in PR Docket No. 93-144 and PP Docket No. 93-253. The questions posed in the survey are presented below and, for each question, there is a discussion of the members' responses.

**I. From a technical perspective, do you think the "re-tuning" proposal is feasible?**

A total of 27 members responded to this question. The responses were as follows:

16 members (59% of the respondents) stated that the re-tuning proposal was not technically feasible.

11 members (41% of the respondents) considered the proposal to be technically feasible.

Those members who believe the re-tuning proposal is not technically feasible point to concerns about whether the "re-tuned" frequencies would be compatible with the other frequencies already in use at a licensee's base station. Of primary concern was the issue of whether there would be appropriate spacing or separation between each of the channels authorized for a system. The difficulty of finding available spectrum to support the re-tuning is complicated by the need, in most cases, for a minimum of 250 kilohertz separation between the individual channels used in a system. This is necessary, the respondents noted, because many licensees would be unable to secure additional space on their antenna towers. Therefore, licensees would normally have to use their existing antenna system, resulting in the need for adequate separation between the assigned frequencies.

**II. Assuming that wide-area SMR licensees were to pay all of the direct costs of the "re-tuning" effort, would you object to having your system re-tuned to other available spectrum?**

A total of 27 members responded to this question. The responses were as follows:

19 members (70% of the respondents) objected to any mandatory requirement for re-tuning.

8 members (30% of the respondents) would not object to having their systems re-tuned.

Those members who objected to the mandatory requirement for re-tuning cited the lack of sufficient spectrum to support the re-tuning effort, the severe logistical difficulties inherent in reprogramming the mobile and portable units used by subscribers, and the need for complete replacement of mobile units in some cases. Many members were not convinced that there is an adequate "inventory" of frequencies below 861 MHz in all of the Major Trading Areas to support the re-tuning proposal. Others noted that the re-tuning effort would place intolerable demands on licensees' technical personnel over a long period of time. The re-tuning effort, these members said, would cause significant disruption and degradation of existing service, with resulting adverse impact on customer satisfaction and good will.

**III. Do you support the idea of requiring entities who have applications now pending at the FCC to establish 800 MHz SMR systems, either trunked or conventional, to post a performance bond for an appropriate amount (e.g., \$10,000 to \$50,000) as a pre-requisite for issuance of a station license?**

A total of 26 members responded to this question. The responses were as follows:

16 members (62% of the respondents) supported the idea of requiring existing applicants to post a performance bond as a condition of licensing.

10 members (38% of the respondents) opposed any requirement for applicants to post a performance bond as a condition of licensing.

Most of the members supporting the concept of a performance bond expressed the hope that this measure might help to limit the licensing of systems to speculators. Many members, however, felt that it was too late for performance bonds to have any significant effect on speculative influences.